IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

WP(C).No. 10218 of 2006(N)

AGAINST THE ORDER IN IA 2425 2005 IN OS.155/1999 of III ADDL.SUB COURT, KOZHIKODE

.....

PETITIONER:

MARIVEETTIL LEELA AMMA,
AGED 65 YEARS, D/O.AMBALAMOLY GOPALANKUTTY NAIR,
PUTHUR AMSOM AND DESOM, KOZHIKODE.

BY ADV. SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR

RESPONDENTS:

----

1. **AMBALAMOLY AMMU AMMA,**
   AGED 91 YEARS, D/O.ITTEERA AMMA,
   SANTHI BHAVAN, THAMARASSERY AMSOM,
   DESOM, CHELANNUR.

2. **AMBALAMOLY MADHAVAN NAIR,**
   AGED 85 YEARS, S/O.ITTEERA AMMA,
   CHATTILOODI VEEDU, ERAVANNUR AMSOM, DESOM.

3. **AMBALAMOLY THANKAM AMMA,**
   AGED 72 YEARS, D/O.MALU AMMA,
   KALPAKASSERY, THIRUVAMBADI AMSOM,
   DESOM.

4. AMBALAMOLY DAMODARAN NAIR,
AGED 70 YEARS, S/O.MALU AMMA,
CHATTILODI VEEDU, ERAVANNUR AMSOM,
DESOM, NARIKUNI.

5. AMBALAMOLY BALAKRISHNAN NAIR,
AGED 68 YEARS,
S/O.MALU AMMA, DO. DO.

6. AMBALAMOLY KUNHISANKARAN NAIR,
AGED 65 YEARS, S/O.MALU AMMA,
"SUMANTHAKAM", ERAVANNUR AMSOM,
DESOM, NARIKUNNI.

7. AMABALAMOLY SATHYAVATHI AMMA,
AGED 57 YEARS, D/O.MALU AMMA,
CHALIL VEEDU, PADINHATTUMURI AMSOM, DESOM.

8. AMBALAMOLY KUNHILAKSHMI AMMA,
AGED 4 YEARS, D/O.MALU AMMA, THAYYIL VEEDU,
CHEVAYUR AMSOM, DESOM, KOZHIKODE.

9. AMBALAMOLY NARAYANAN NAIR,
AGED 69 YEARS, S/O.DEVAKI AMMA, CHETTIANKANDY
VEEDU, ERAVANNUR AMSOM, DESOM, KOYILANDY.

10. AMBALAMOLY PADMANABHAN NAIR,
AGED 84 YEARS, S/O.LAKSHMI AMMA KUNNATH VEEDU,
NADUVALLUR AMSOM, DESOM.

11. AMBALAMOLY RAVUNNIKUTTY NAIR,
AGED 82 YEARS, S/O.LAKSHMI AMMA,
"GREEEN LAND", CHAKKORATHKULAM, WEST HILL.

12. AMBALAMONY NANI AMMA,
AGED 80 YEARS, D/O.LAKSHMI AMMA,
KUNNATHU VEEDU, NADUVALLUR AMSOM, DESOM,
NANMINDA.

13. AMBALAMOLY KRISHNAN KUTTY NAIR,
AGED 75 YEARS, S/O.LAKSHMI AMMA,
KUNNATH VEEDU, NADUVALLUR AMSOM, DESOM,
NANMINDA.

14. AMBALAMOLY GANGADHARAN NAIR,
AGED 71 YEARS, S/O.LAKSHMI AMMA,
CHATTILODI VEEDU, ERAVANNUR AMSOM,
DESOM, NARIKUNNI.

15. HARIDASAN NAIR,
AGED ABOUT 50 YEARS, S/O.THANKAM AMMA,
KALPAKASSERI, THIRUVAMBADI AMSOM,
DESOM.

16. CHANDRALEKHA, AGED ABOUT 45 YEARS,
D/O.THANKAM AMMA, KALPAKASSERI,
THIRUVAMBADI AMSOM, DESOM.

17. SHYLAJA, AGED ABOUT 43 YEARS,
D/O.THANKAM AMMA, DO. DO.

18. KRIKSHNAKUMARAN NAIR,
AGED ABOUT 41 YEARS, S/O.THANKAM AMMA,
DO. DO.

19. INDIRA, AGED ABOUT 37 YEARS,
D/O.THANKAM AMMA, DO. DO.

20. VINODKUMAR, AGED ABOUT 35 YEARS,
S/O.THANKAM AMMA, DO. DO.

21. BIJU, AGED ABOUT 33 YEARS,
S/O.THANKAM AMMA, DO. DO.

22. RAJAMANI AMMA,
AGED ABOUT 51 YEARS, D/O.SATHYAVATHI AMMA,
CHALIL VEEDU, PADINHATTUMUTI AMSOM, DESOM.

23. RAJITH KUMAR, AGED ABOUT 45 YEARS,
S/O.SATHYAVATHI AMMA, KALPAKASSERI,
THIRUVAMBADI AMSOM, DESOM.

24. RAJITHA, AGED ABOUT 42 YEARS,
D/O.SATHYAVATHI AMMA, DO. DO.

25. SABITHA, AGED ABOUT 40 YEARS,
D/O.KUNHILAKSHMI AMMA, THAYYIL VEEDU,
CHELAVOOR AMSOM, DESOM.

26. SAJITHA, AGED 37 YEARS,
D/O.KUNHILAKSHMI AMMA, THAYYIL VEEDU,
CHELAVOOR AMSOM, DESOM.

27. SASITHA, AGED ABOUT 35 YEARS,
D/O.KUNHILAKSHMI AMMA, THAYYIL VEEDU,
CHELAVOOR AMSOM, DESOM.

28. JANARDHANAN NAIR, AGED ABOUT 53 YEARS,
S/O.AMMU AMMA, SANTHI BHAVAN,
THAMARASSERY AMSOM, DESOM.

29. VIJAYAN NAIR, AGED ABOUT 45 YEARS,
S/O.AMMU AMMA, SANTHI BHAVAN,
THAMARASSERY AMSOM, DESOM.

30. ANANDAVALLY, AGED ABOUT 55 YEARS,
W/O.AMBALAMOLY VASUDEVAN NAIR,
THAMARASSERY AMSOM, DESOM,
KOZHIKODE.

31. DANEESH, AGED ABOUT 35 YEARS,
S/O.VASUDEVAN NAIR, DO. DO.

32. DANYA, AGED ABOUT 30 YEARS,
D/O.AMBALAMOLY VASUDEVAN NAIR,
DO. DO.

BY ADV. SRI.C.P.MOHAMMED NIAS for R22 & R23 to R32

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.10218/2006 N

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE JUDGMENT IN A.S.NO.182/2004 ON THE FILE OF THE DISTRICT JUDGE'S COURT, KOZHIKODE DTD. 27/07/2005.**

EXT.P2: **COPY OF THE AFFIDAVIT ACCOMPANYING I.A.NO.2425/2005 IN O.S.NO.155/99 ON THE FILE OF THE SUB COURT-IIIA, KOZHIKODE.**

EXT.P3: **COPY OF THE COMMON ORDER IN I.A.NO.2425/2005 AND CONNECTED I.A.s IN O.S.NO.155/1999 ON THE FILE OF THE SUB COURT, KOZHIKODE DTD. 14/02/2006.**

/TRUE COPY/

P.S.TO JUDGE

KSS

M.N.KRISHNAN, J

==========

W.P.(C) No.10218 OF 2006

==========

Dated this the 4th day of September 2007

JUDGMENT

This writ petition is filed to set aside the order in I.A.No.2425 of 2005 in O.S.No.155 of 1999 of the Sub Court, Kozhikode whereby the court below refused the amendment of the plaint. The brief facts necessary for the disposal of the writ petition are stated as follows: The 2nd plaintiff, who is the petitioner herein filed a suit for injunction with respect to B schedule property and for partition with respect to C schedule property. The contesting defendants put forth the contention that there was a Will executed by Gopalan Kutty Nair, the father of the plaintiffs in their favour in the year 1989 and therefore the plaintiffs are not entitled to any relief. The court below accepted that contention and dismissed the suit. Against that decision an appeal was preferred before the appellate court. The appellate court, on reference to documents Exts.B6 and B8 found that there is intrinsic evidence to establish that the Will of the year 1989 has been cancelled. The appellate court also considered the rejection of the prayer of the defendants for receiving additional written statement. A perusal of

Ext.P1 judgment would reveal that defendants in their additional written statement have sought to raise a contention that the Will No. 76 of 1989 was cancelled by Document No.1 of 1992 and that the properties were bequeathed to respondents 4 to 6 as per Document No.1/92. The appellate court found that even according to the admitted case of both parties the Will of the year 1989 was not in force. So the court permitted the additional statement to be received basing on Document No.1/1992.

2. After remand, the 2nd plaintiff moved an application for amendment of the plaint claiming recovery of possession of plaint B schedule property on the strength of title. The court below rejected that prayer on the ground that the scope of remand is limited only for the purpose of receiving additional written statement and therefore the court cannot go beyond the scope of remand. Technically one cannot find much fault with the court below. But, at the same time in a suit of this nature, which is pending from 1999, it is not correct to drive the parties to various litigations and therefore I feel the scope of the remand can be widened for the purpose of administering justice to the parties. The question whether the plaintiff is entitled to absolute right over the property as legal heir of Gopalan Kutty Nair or respondents 4 to 6 have got right over the property by virtue of Document No.1/92 are all matters which require consideration

at the hands of the court below. No valuable right of the defendants will be taken away by permitting the plaint to be amended and therefore in the interest of justice, I set aside the order of the court below and allow the amendment application, I.A.No.2425/2005 making it clear that the defendants can file a further additional written statement and raise all the pleas including the plea of adverse possession and limitation, if it is available to them.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-